

# HEARING SUMMARY FORM

0831 - 17

**Hearing:**

Dec. 18, 2017 1430 hours  
Date Time

Location: 170 N. Main, Room 12-08

Attended by: PII D. Scheffer, 13218

Hearing Officer: Deputy Chief F. Garrett, 3102

**Statement of Hearing Officer:** On December 18, 2018 and administrative hearing was held in regards to Statement of Charges #. This incident occurred on August 24, 2017 when you and your partner encountered an elderly 91 year old man who approached you while you were on a disturbance call at Swift; at approximately 3:30 p.m.

**Action Ordered:** DR 104 Personal Conduct – Sustained, 1 Day SWOP  
Diversity/Sensitivity Training

  
Hearing Officer

Any employee holding a position not exempted from the provisions of Article 34 Civil Service, and not in the initial probationary period, who has been suspended in excess of ten, (10) days, terminated, or demoted, may appeal to the Civil Service Commission within ten, (10) calendar days after notification in writing of such action. In the event of multiple suspensions, only that suspension which causes the total number of days suspended to exceed five, (5) days within a six month period, and any subsequent suspension within said period shall be appeal able to the Commission. If the disciplinary action is 10 days or less, the officer may submit to a grievance procedure or an internal appeal, but not to both.

In addition Chapter I Section 5 page 4 states in part: "Commissioned police officers with a status of suspension, probation, non-enforcement, relieved of duty, or leave of absence are not permitted to engage in any Secondary Employment and/or any Off Duty Security Employment where the officer's status is dependant on his/her state commissioned status. No commissioned police officer is permitted to engage in any Secondary Employment and/or Off duty Security Employment for a period of thirty (30) days after the final disposition of (1) any sustained Statement of Charges for violation of the Sick Abuse policy or (2) any sustained Statement of Charges resulting in a suspension and/or reduction in rank" Notification will be made to the Secondary Employment Office regarding this suspension. Violation of the above listed policy could result in additional charges.

**Appeal:**      Will   B   Will Not Be Filed

**Grievance:**      Will   B   Will Not Be Filed

I understand that by requesting the grievance procedure that I am waiving my right to recourse through the Internal or Civil Service Commission Appeal Process.

12/18/2017  
Date

  
Employee Signature

Distribution: MPD Human Resources, Branch Commander/Division Commander, Precinct

At that time, you were not actively involved with the disturbance call and were standing on the sidewalk in front of the residence. The elderly man was not involved in the disturbance and was carrying a long wooden stick for assistance to walk and fend off stray dogs in the neighborhood. The entire incident, from the elderly man's approach to his arrest, was captured on both officers' Body-Worn Camera (BWC) and was also witnessed in the presence of civilians.

According to the BWC footage, the elderly man inquired about the police presence in the area by customary means as a concerned citizen and resident in the neighborhood. His gestures implied that he was calm, friendly, but had difficulty with hearing and his eyesight. You and your partner did not use tact or empathy and displayed a lack of concern in your responses to the elderly man. Your BWC video captured your response to the elderly man several times, "Don't worry about it" in the same unprofessional tone.

Also, your BWC footage revealed you smoking a cigarette on the scene and when you extinguished the cigarette, you "flicked" the cigarette butt in the direction of the elderly man in a disrespectful manner.

After the arrest, you failed to properly instruct the subject about the misdemeanor citation. You did not explain the two appearance dates or consider the man's inability to read or write.

These actions place you in violation of DR 104 Personal Conduct which states:

#### **DR 104 PERSONAL CONDUCT**

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

Officer Scheffer was asked if he wanted to respond to the charges. Officer Scheffer advised he responded to the call because there was a history of problems at the location. He admitted that he and Officer Jeffers were not directly involved in the disturbance but were monitoring the scene. He advised the elderly male approached and asked what was going on. Officer Scheffer admitted that he watched his body worn camera footage and realizes that he could have handled the situation better. He advised he could not explain why he did not do so other than the fact that he was focused on the potential disturbance. He further admitted he could have given an explanation and that his tone should have been better but explained that he had spent eleven years in the military which might account for his tone. Officer Scheffer also noted that in some cases he should respond in a restrained manner and in other case he must restrain his partner. Officer Scheffer stated that although they explained the process for the misdemeanor citation but could have done a better job. He added that he was smoking on the scene, which was

**improper, but stated that he actually flipped the cigarette to his rear and not in the direction of the elderly male.**

**Officer D. Gibbs added that the officers were considering officer safety in their initial response/reaction to the elderly male but also admitted that the situation could have been resolved with verbal communication, which often eliminates the need for hands on interaction. He stated Officer Scheffer has learned from this incident and realizes how this incident was perceived.**

**After taking into consideration all testimony, the investigative file and adding the officers own admission the charge of DR 104, Personal Conduct was Sustained. After reviewing the officer's disciplinary resume, a one (1) day suspension without pay and Diversity/Sensitivity training was ordered.**

**The officer will take his suspension day on December 19, 2017.**

**City of Memphis  
Police Division  
Inspectional Services Bureau**

**Administrative Summons**

**Memphis Police Department VS.  
Scheffer, David IBM: 13218**

**Date: October 11, 2017  
ISB Case #: I2017-029**

**I. Allegation**

On August 24, 2017, at approximately 3:30 p.m., it is alleged that you and your partner used excessive and unnecessary force against a 91 year old citizen during his arrest at ) Swift.

**II. Rules, regulations or orders violated.**

**DR 104 Personal Conduct**

**III. Hearing**

Date: *MONDAY 12-18-17*

Place: *170 N. MAIN 12th Floor Chief Garrett*

Time: *1430 hrs*

You are entitled to representation during this hearing.

Served by:

*Pete Smith LT. RWSA 8431*  
Name/Rank/Assignment/IBM

Date: *12-14-17*

Time: *0700 hrs*

Signature of Officer:

*[Signature]* 13218

YOUR ATTENDANCE AT THE HEARING NOTICED HEREIN IS REQUIRED, UNLESS EXCUSED DUE TO A MEDICAL EMERGENCY. FAILURE TO ATTEND WILL BE CONSTRUED BY THE HEARING OFFICER AS A WAIVER OF YOUR RIGHT TO BE HEARD. ATTENDANCE WILL BE EXCUSED DUE TO A MEDICAL EMERGENCY IN THE SOLE DISCRETION OF THE HEARING OFFICER, AND ONLY IF YOU HAVE DELIVERED, OR CAUSED TO BE DELIVERED, TO THE HEARING OFFICER, PRIOR TO THE HEARING DATE, A WRITTEN STATEMENT OF MEDICAL CONDITION, PREPARED AND SIGNED BY THE YOUR TREATING PHYSICIAN, DESCRIBING YOUR MEDICAL CONDITION AND ADVISING THAT YOU ARE NOT ABLE TO ATTEND THE HEARING AS A RESULT OF SAID CONDITION.



0831-17  
J. H.

**City of Memphis  
Police Division  
Inspectional Services Bureau**

**Case # I2017-029      Statement of Charges**

**Officer's Name:** Scheffer, David

**IBM #** 13218

**Rank:** POLICE OFFICER II

**Assignment:** Ridgeway Station - "A"

**Date:** October 11, 2017

Notice is hereby given that you are being charged with violation(s) of policy, law or regulations as shown below:

DR 104 Personal Conduct

*Sustained 1 Day SWOP and  
Diversity/Sensitivity Training  
also ordered*

**Date of Occurrence:** August 24, 2017

**Statement of Particulars:**

This administrative investigation revealed that you and your partner encountered an elderly 91 year old man who approached you while you were on a disturbance call at 1 Swift; at approximately 3:30 p.m. At that time, you were not actively involved with the disturbance call and were standing on the sidewalk in front of the residence. The elderly man was not involved in the disturbance and was carrying a long wooden stick for assistance to walk and fend off stray dogs in the neighborhood. The entire incident, from the elderly man's approach to his arrest, was captured on both officers' Body-Worn Camera (BWC) and was also witnessed in the presence of civilians.

According to the BWC footage, the elderly man inquired about the police presence in the area by customary means as a concerned citizen and resident in the neighborhood. His gestures implied that he was calm, friendly, but had difficulty with hearing and his eyesight. You and your partner did not use tact or empathy and displayed a lack of concern in your responses to the elderly man. Your BWC video captured your response to the elderly man several times, "Don't worry about it" in the same unprofessional tone.

Also, your BWC footage revealed you smoking a cigarette on the scene and when you extinguished the cigarette, you "flicked" the cigarette butt in the direction of the elderly man in a disrespectful manner.

After the arrest, you failed to properly instruct the subject about the misdemeanor citation. You did not explain the two appearance dates or consider the man's inability to read or write.

These actions place you in violation of DR 104 Personal Conduct which states:

**DR 104 PERSONAL CONDUCT**

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

(The officer's disciplinary resume will be reviewed and become a part of this file)

G. H. H. 8435 905A  
Issuing Officer

J. B. Cobb #1567  
Charging Officer

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I acknowledge receipt of this notice and understand that further investigation may result in additional charges, amendment of the above charges, or dismissal of these charges.

I further understand that a written response to these charges at this time is at my discretion unless specifically instructed to file same by the issuing officer.

[Signature] 132/8  
Signature of Officer:

# HEARING SUMMARY FORM

## # 0832-17

**Hearing:**

December 18, 2017    1430 hrs.  
Date                      Time

Location: 170 North Main, Rm. 12-08

Attended by: PII M. Jeffers, 12583

Hearing Officer: Deputy Chief F. Garrett, 3102

**Statement of Hearing Officer:** On December 18, 2017, an Administrative Hearing was held in regards to Statement of Charges # 083 - 17. It is alleged that you violated DR 104, Persona Conduct and DR 301, Excessive/Unnecessary Force.

**Action Ordered:** DR 104 Personal Conduct - Sustained, 1 day SWOP  
DR 301 Excessive/Unnecessary Force, 1 day SWOP  
Diversity/Sensitivity Training  
90 day TA to COPS

  
Hearing Officer

Any employee holding a position not exempted from the provisions of Article 34 Civil Service, and not in the initial probationary period, who has been suspended in excess of ten, (10) days, terminated, or demoted, may appeal to the Civil Service Commission within ten, (10) calendar days after notification in writing of such action. In the event of multiple suspensions, only that suspension which causes the total number of days suspended to exceed five, (5) days within a six month period, and any subsequent suspension within said period shall be appeal able to the Commission. If the disciplinary action is 10 days or less, the officer may submit to a grievance procedure or an internal appeal, but not to both.

In addition Chapter I Section 5 page 4 states in part: "Commissioned police officers with a status of suspension, probation, non-enforcement, relieved of duty, or leave of absence are not permitted to engage in any Secondary Employment and/or any Off Duty Security Employment where the officer's status is dependant on his/her state commissioned status. No commissioned police officer is permitted to engage in any Secondary Employment and/or Off duty Security Employment for a period of thirty (30) days after the final disposition of (1) any sustained Statement of Charges for violation of the Sick Abuse policy or (2) any sustained Statement of Charges resulting in a suspension and/or reduction in rank" Notification will be made to the Secondary Employment Office regarding this suspension. Violation of the above listed policy could result in additional charges.

**Appeal:**         Will    Will Not    **Be Filed**

**Grievance:**         Will    Will Not    **Be Filed**

I understand that by requesting the grievance procedure that I am waiving my right to recourse through the Internal or Civil Service Commission Appeal Process.

12-18-17  
Date

M. Jeffers #12583  
Employee Signature

Distribution: MPD Human Resources, Branch Commander/Division Commander, Precinct

**This incident occurred on August 24, 2017 when you and your partner encountered an elderly 91 year old man who approached you while you were on a disturbance call at 1 Swift; at approximately 3:30 p.m. At that time, you were not actively involved with the disturbance call and were standing on the sidewalk in front of the residence. The elderly man was not involved in the disturbance and was carrying a long wooden stick for assistance to walk and fend off stray dogs. The entire incident from the elderly man's approach to the arrest was captured on both of your Body-Worn Cameras (BWC) and occurred in the presence of civilian witnesses.**

**According to the BWC footage, the elderly man inquired about the police presence in the area by customary means as a concerned citizen and resident in the neighborhood. His gestures implied that he was calm, friendly, but had difficulty with hearing and his eyesight. You and your partner did not use tact or empathy and displayed a lack of concern. After the arrest, you failed to properly instruct the subject about the misdemeanor citation and forced him to apply his signature by grasping his wrist. You did not explain the two appearance dates or consider the man's inability to read or write. These actions place you in violation of DR 104 Personal Conduct which States:**

**The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.**

**Furthermore, your arrest of the elderly man was captured on BWC video and witnessed by several civilian witnesses. According to the civilian witnesses, your actions were described as unnecessary based on the subject's age, body weight, and known physical disabilities. During the arrest, your BWC became detached and inoperable. However, your partner's BWC video captured the physical force used by you to affect the arrest after the stick was removed from the elderly man's left hand. From the sidewalk to the patrol car (approximately five to ten feet), your momentum forcibly pushed his small frame onto the hood of the patrol vehicle. Thereafter, you and your partner struggled with the man to secure him in handcuffs. You failed to verbally instruct him to place his hands behind his back. He did not appear to resist or evade you. The question becomes whether you should have utilized less force to apply the handcuffs rather than forcing him against the patrol vehicle with your weight.**

**The facts of the investigation revealed you used poor judgement in regards to the level of force used to detain a non-combative 91-year old individual. Although he did not complain of any physical injuries, your actions were not deemed to be**

**excessive, but your actions were unnecessary. These actions placed you in violation of DR 301: Excessive Force/Unnecessary Force which states:**

**The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.**

**Officer Jeffers was asked if he wanted to respond. Officers Jeffers advised he responded to the call and was looking at the house where the officers were. He advised the elderly male approached and was speaking with Officer Scheffer. He advised although he could hear them he was not focused on their conversation. Out of the corner of his eye, Officer Jeffers advised he saw Officer Scheffer quickly grabbing the stick from the elderly male. He advised he just reacted and grabbed the male and took the male to the car. Officer Jeffers advised he just watched the video on the December 16<sup>th</sup> and admitted that his reaction was knee-jerk and that in hindsight he could have handled this situation differently.**

**Officer Jackson advised that he had spoken with Officer Jeffers regarding the incident over the past few weeks. He advised he patrols the same area as Officer Jeffers and has never received any complaints regarding his actions. Officer Jackson advised that although Officer Jeffers has integrity, he will need to realize that the dynamics of policing are changing.**

**After taking into consideration all testimony, the investigative file and the officer's own admission, the charge of DR-104, Personal Conduct and DR-301, Excessive/Unnecessary Force were sustained. After reviewing the officer's disciplinary resume, a one (1) day suspension without pay was ordered for DR -104, Personal Conduct, a one day (1) suspension without pay ordered for DR- 301 Excessive/Unnecessary Force and Diversity/Sensitivity training was ordered.**

**The officer will take his suspension days on December 19, 2017 and December 22, 2017.**

**City of Memphis  
Police Division  
Inspectional Services Bureau**

**Administrative Summons**

**Memphis Police Department VS.  
Jeffers, Michael IBM: 12583**

**Date: October 11, 2017  
ISB Case #: I2017-029**

**I. Allegation**

On August 24, 2017, at approximately 3:30 p.m., it is alleged that you and your partner used excessive and unnecessary force against a 91 year old citizen during his arrest at Swift.

**II. Rules, regulations or orders violated.**

**DR 104 Personal Conduct  
DR 301 Excessive Force/Unnecessary Force**

**III. Hearing**

**Date:**

**Place:**

**Time:**

**You are entitled to representation during this hearing.**

**Served by:**

  
Name/Rank/Assignment/IBM

**Date:** 12-15-17

**Time:** 2:00 pm

**Signature of Officer:**

M 3/12 #12583

**YOUR ATTENDANCE AT THE HEARING NOTICED HEREIN IS REQUIRED, UNLESS EXCUSED DUE TO A MEDICAL EMERGENCY. FAILURE TO ATTEND WILL BE CONSTRUED BY THE HEARING OFFICER AS A WAIVER OF YOUR RIGHT TO BE HEARD. ATTENDANCE WILL BE EXCUSED DUE TO A MEDICAL EMERGENCY IN THE SOLE DISCRETION OF THE HEARING OFFICER, AND ONLY IF YOU HAVE DELIVERED, OR CAUSED TO BE DELIVERED, TO THE HEARING OFFICER, PRIOR TO THE HEARING DATE, A WRITTEN STATEMENT OF MEDICAL CONDITION, PREPARED AND SIGNED BY THE YOUR TREATING PHYSICIAN, DESCRIBING YOUR MEDICAL CONDITION AND ADVISING THAT YOU ARE NOT ABLE TO ATTEND THE HEARING AS A RESULT OF SAID CONDITION.**



**City of Memphis**  
**Police Division**  
**Inspectional Services Bureau**

**Case # I2017-029      Statement of Charges**

**Officer's Name:** Jeffers, Michael

**IBM #** 12583

**Rank:** POLICE OFFICER II

**Assignment:** Airways Station - "C"

**Date:** October 11, 2017

Notice is hereby given that you are being charged with violation(s) of policy, law or regulations as shown below:

DR 104 Personal Conduct *Sustained 1 Day SWOP*

DR 301 Excessive/Unnecessary Force *Sustained 1 Day SWOP*

**Date of Occurrence:** August 24, 2017

*also ordered Diversity/Sensitivity Training  
and a 90 Day TA to COPS*

**Statement of Particulars:**

This administrative investigation revealed that you and your partner encountered an elderly 91 year old man who approached you while you were on a disturbance call at Swift; at approximately 3:30 p.m. At that time, you were not actively involved with the disturbance call and were standing on the sidewalk in front of the residence. The elderly man was not involved in the disturbance and was carrying a long wooden stick for assistance to walk and fend off stray dogs. The entire incident from the elderly man's approach to the arrest was captured on both of your Body-Worn Cameras (BWC) and occurred in the presence of civilian witnesses.

According to the BWC footage, the elderly man inquired about the police presence in the area by customary means as a concerned citizen and resident in the neighborhood. His gestures implied that he was calm, friendly, but had difficulty with hearing and his eyesight. You and your partner did not use tact or empathy and displayed a lack of concern. After the arrest, you failed to properly instruct the subject about the misdemeanor citation and forced him to apply his signature by grasping his wrist. You did not explain the two appearance dates or consider the man's inability to read or write. These actions place you in violation of DR 104 Personal Conduct which states:

## **DR 104 PERSONAL CONDUCT**

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

Furthermore, your arrest of the elderly man was captured on BWC video and witnessed by several civilian witnesses. According to the civilian witnesses, your actions were described as unnecessary based on the subject's age, body weight, and known physical disabilities. During the arrest, your BWC became detached and inoperable. However, your partner's BWC video captured the physical force used by you to affect the arrest after the stick was removed from the elderly man's left hand. From the sidewalk to the patrol car (approximately five to ten feet), your momentum forcibly pushed his small frame onto the hood of the patrol vehicle. Thereafter, you and your partner struggled with the man to secure him in handcuffs. You failed to verbally instruct him to place his hands behind his back. He did not appear to resist or evade you. The question becomes whether you should have utilized less force to apply the handcuffs rather than forcing him against the patrol vehicle with your weight.

The facts of the investigation revealed you used poor judgement in regards to the level of force used to detain a non-combative 91-year old individual. Although he did not complain of any physical injuries, your actions were not deemed to be excessive, but your actions were unnecessary. These actions placed you in violation of DR 301: Excessive Force/Unnecessary Force.

## **DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE**

Excessive Force/Unnecessary is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

(The officer's disciplinary resume will be reviewed and become a part of this file)

*Robert A. Mann 5602*  
Issuing Officer

*J.B. Cobb #1567*  
Charging Officer

I acknowledge receipt of this notice and understand that further investigation may result in additional charges, amendment of the above charges, or dismissal of these charges.

I further understand that a written response to these charges at this time is at my discretion unless specifically instructed to file same by the issuing officer.

*M. R. #12583*  
Signature of Officer:

Written Response Ordered? ☐ Yes ☐ No

Was officer relieved of duty? ☐ Yes ☐ No

Reviewed by: ☒ *11/22/17* Dep. Dir. ☐ Dep. Chief ☐ Work Station Commander

Delegated to: ☒ Dep. Chief ☐ Station/Bureau

*G. ARRETT*

Major/Lt. Colonel/Colonel

**City of Memphis**  
**Police Division, Inspectional Services Bureau**  
**Case Summary I2017-029**

Printed On: 7/3/2020

**I) Principal Officers:**

Police Officer II Michael Jeffers, IBM #12583  
Police Officer II David Scheffer, IBM #13218

Airways Station - "C"  
Airways Station - "C"

**II) Administrative Regulation:**

DR 104 Personal Conduct  
DR 301 Excessive/Unnecessary Force

**III) Allegation:**

On August 24, 2017, at approximately 3:30 p.m., it is alleged that Officers Michael Jeffers and David Scheffer used excessive and unnecessary force against Otha Thurmond during his arrest at Swift.

**IV) Background:**

On August 24, 2017, Officers Jeffers and Scheffer assisted other cars on a disturbance call at 1 Swift Street. As Officer Jeffers and Officer Scheffer were standing by on the sidewalk in front of the residence, 91 year old Otha Thurmond walked by carrying a half broom handle type stick in his right hand. Mr. Thurmond approached Scheffer and asked what was going on. Officer Scheffer advised Mr. Thurmond not to worry about it. Mr. Thurmond waved and pointed the stick and raised the stick above his shoulder. Officer Scheffer grabbed the stick away to disarm him. At the same time, Officer Jeffers observed Mr. Thurmond wave and raise the stick in front of his partner and perceived Thurmond's actions as a threat to him and Officer Scheffer's safety. Officer Jeffers grabbed him by his arm to detain him. Mr. Thurmond was placed in handcuffs and then placed in the back of a patrol car. A misdemeanor citation was issued for Disorderly Conduct in lieu of a physical arrest.

**V) CAD #:**

P172361411 and P172361403

**VI) Evidentiary Findings:**

**A) Statements:**

**Civilian Witness Statement:** Otha Thurmond stated he uses a stick to help him balance himself and to fend off wandering dogs. He observed several police cars

down the street, during his daily walk, and went to see what was going on. He was walking with his stick. He asked the officer, "What's going on?" and "What's happening down here?" The officer became "hot" towards him. While speaking with the officers he held the stick up and then caught it in his hand to give him a little balance. He never struck or made any threats to strike the officers. Thurmond was then handcuffed behind his back. He was placed in the back of a squad car, but never explained why he was being detained or arrested. When it came to sign the citation, he explained he couldn't see or write very well, therefore, the officer physically assisted him while signing the citation. Thurmond was also confused because he did not know what he was signing or why he had been treated in that manner. Thurmond thought he was going to jail, but they released him and he walked away. Although he normally holds the stick like a bat, he was not holding it in a threatening manner. Thurmond advised he's been living in the neighborhood since 1964 and has never had an issue with other officers.

**Civilian Witness Statement:** Carl Randolph stated he was at Swift to conduct repair work for the owner/landlord, Barbara Denton. He parked across the street and was sitting in his truck when he observed Mr. Thurmond "calmly and gingerly" walking down the sidewalk carrying a stick down at his side. The stick appeared to be handmade, and was about 3/4" round and about 3' to 4' feet long. Thurmond, who appeared to be in his 80's, and approximately 120-130 lbs., was using the stick to assist his walk.

Thurmond approached two male white officers who were standing on the sidewalk in a non-threatening manner. He appeared to be asking one of the officers (Officer Scheffer) what was going on. Scheffer was calm and nonaggressive and the two were standing 3 to 4 feet apart. Randolph could not hear their conversation. He saw Thurmond raise the stick to his side, however, it did not strike the officer. The other officer (Officer Jeffers) spontaneously ran up and grabbed Thurmond from behind, placed his hands behind his back and also above his waist. Thurmond appeared uncomfortable as he was placed on the squad car.

Randolph was shocked and exited his truck to ask, "What did he do?" Jeffers told him Thurmond "had hit his partner." A younger girl on the front porch recorded the incident on her cell phone. Thurmond was then placed in the back of a squad car. Jeffers quickly walked up closely to Randolph, confronted him in an aggressive tone, and told Randolph to get back in his truck. Randolph felt threatened, but refused. Once Jeffers realized the media was present, Jeffers seemed less aggressive. Randolph heard Thurmond tell the officers he needed his glasses to see. He also asked, "What am I signing?" and "I can't sign anything, because I can't see." At that time, Thurmond appeared shaken up while Jeffers was arrogant.

**Civilian Witness Statement:** Niesha Lowe stated she was standing on her front porch at Swift and saw Mr. Thurmond walk down the street. She described Thurmond as 91 years old weighing about 100 lbs. Two male white officers were standing near the street. She described one officer as 6 ft. tall, bald and muscular and

in his 40's (Officer Jeffers). The other officer was shorter, in his 30's, with short black hair and wearing a cap (Officer Scheffer). Thurmond told the officers he wanted to see what was going on. One of the officers (Scheffer) said, "We don't like you with that stick out here. What are you doing with the stick?" Thurmond and Scheffer were facing each other a few inches apart from each other. Thurmond answered, "I need this stick. I use this stick for the animals and to walk." Thurmond showed them the stick and raised it with both hands and held it like a baseball bat, but he did not strike the officers. They took the stick, slammed him on the hood of the squad car, lifted his body, handcuffed him and placed him inside another squad car.

Thurmond was never threatening or aggressive towards the officers and only became upset after being arrested. Lowe acknowledged the way Thurmond was holding the stick was not threatening to her, but may have been to the officers. Lowe stated Scheffer's demeanor was normal, but Jeffers was the officer who was mad and rough with Thurmond. Thurmond was released and Jeffers kept telling Thurmond to sign the paper, but Thurmond said he couldn't see. Jeffers repeatedly placed Thurmond's hand on the paper for him to sign the citation.

**Civilian Witness Statement:** Barbara Denton, the owner and landlord of Swift, had gone to the residence to meet "Vick" (Carl Randolph), the repairman. She had nothing to do with the initial call to the residence. As she arrived on the scene, she observed that the officers had Thurmond buckled up with his elbows (way up in the air behind his back) with his head up against the squad car. She did not observe the initial altercation. Denton stated as Jeffers was taking him to his squad car, Thurmond almost fell over. Denton, who was standing on the other side of the street with Randolph, attempted to explain to the officers that Thurmond was 90 years old and could hardly hear or see. She explained Thurmond walks down to the corner every day, and if he walks past the corner, he gets lost. He carries a stick every day to fight off dogs and to balance as he walks.

As she was explaining this to the officers, Jeffers came from across the street and told her that she and Randolph had nothing to do with the situation. He told them they were inciting a riot and for them to get over on the sidewalk. Jeffers was rude, arrogant and showed no compassion. Denton never heard Thurmond make any threats towards the officers and she only observed the stick after Thurmond had been detained. Denton never approached the officers, intervened or made any threats towards them. Denton stated there was a male and female black officer standing on the front porch talking with other people when she arrived.

**Civilian Witness Statement:** Mitchell Madison stated Mr. Thurmond is 91 years old and cannot see or hear very well. On the day of the incident, Madison stated he was standing on the front porch at Swift. He observed Thurmond walking down the street carrying a stick as he normally does every day to keep the dogs away. He observed one of the officers say something to Thurmond, but Thurmond couldn't hear him very well. He raised the broom handle stick up and the officer (Jeffers) grabbed him and threw him up against the hood of the squad car. Madison also implied



Thurmond was raising his hand to make a gesture that he couldn't hear what the officer was saying, and the stick just happened to be in the hand he was gesturing with.

Jeffers took the stick and placed Thurmond in the back of the squad car. Madison stated the incident took place at the corner of Swift and Davant and not directly in front of the house. Madison could not hear the conversation between the officers and Thurmond. He did not recall Thurmond being handcuffed; he only saw them put him in the back seat. After Thurmond was placed in the backseat, Jeffers became arrogant and rude towards Madison and to Randolph and Denton across the street. Jeffers went back to the car and released Thurmond. Jeffers started saying something to Thurmond, but Thurmond was trying to let him know that he couldn't hear or see well.

**Witness Officer Statement:** Officer Chance Hall, IBM #13636, stated he and Officers Ross and Warren were on the scene of a disturbance call at 1100 Swift. They requested additional cars because they've had trouble at the residence on previous calls. Officers Jeffers and Scheffer were dispatched to assist. Hall was inside the residence when Jeffers and Scheffer arrived. He did not witness the initial incident involving Thurmond. Once Hall went outside, Thurmond was already sitting in the back of the squad car. Hall spoke with Jeffers who stated Thurmond had pointed a stick in his face. When Thurmond wouldn't put it down, Scheffer took the stick away from Thurmond and put him in the back of the squad car. Hall never saw Thurmond with the stick. Jeffers' and Scheffer's demeanor seemed calm. Hall and Ross left to answer another call, and Thurmond was still in the back seat of the squad car. Hall did see two people across the street, but he never observed them interacting with anyone else.

**Witness Officer Statement:** Officer Christopher Ross, IBM #11229, stated he was a two-man car with Officer Hall. They initially answered a disturbance call on Benford and changed their location to 1100 Swift to conduct a follow-up. Officer G. Warren was with them. Ross called for additional cars to assist because the subjects at the Swift address were combative with officers in the past. Officers Jeffers and Scheffer arrived, but Ross and Hall were inside the residence speaking with the complainant and his three daughters. When Ross came outside, Thurmond was already in the back of the squad car. Jeffers and Scheffer were completing paperwork. Ross did observe a "mop handle type stick" on the hood of the squad car, but he never saw Thurmond with it. Ross did not speak with Thurmond directly, but he did hear him yelling and cursing Jeffers and Scheffer from the back of the squad car. Thurmond was handcuffed and appeared to be in his 80's or 90's. Ross did see two individuals yelling at Jeffers and Scheffer from across the street, but he never saw Jeffers or Scheffer speak to them. The woman yelled, "Y'all didn't have to do him (Thurmond) like that. Y'all didn't have to put him on the car like that. I'm calling the news."

**Witness Officer Statement:** Officer Gaysha Warren, IBM #13130, stated she and Officer Ross, and his trainee (Officer Hall), were at the Swift location for a follow-up investigation. They called for additional cars because they've had trouble with the family in the past. Warren was initially inside the residence, but took one of the girls outside to talk. When she went outside, Officers Jeffers and Scheffer were standing at the sidewalk. She observed Mr. Thurmond walking down the sidewalk towards the officers, but thought nothing of it. Thurmond was carrying a stick (about three feet long), down to his side, but everything appeared to be normal. She redirected her attention back to the girl.

Warren didn't hear Thurmond or the officers make any verbal threats, and she did not observe Thurmond raise or strike the officers with the stick. The girl Warren was speaking with noticed something at the street and said, "That's an old man!" Warren turned and saw Officer Jeffers grab Thurmond and place his chest against the hood of the squad car. He placed Thurmond's hands behind his back and Thurmond "struggled a bit" trying to get his hands free. Jeffers then placed Thurmond in the squad car. Warren did not observe any physical contact between Scheffer and Thurmond. Warren believed she heard Jeffers contact Lt. Neely over the radio, but she left the scene before Jeffers and Scheffer cleared.

**Principal Officer Statement:** Officer David Scheffer, IBM #13218, stated he and Officer Jeffers answered a disturbance call to Swift. They received the call for officer safety reasons because individuals in the house had fought with officers in the past. Upon arrival, he and Officer Jeffers stood by on the sidewalk while Officers Warren and Ross were dealing with the complainants on the front porch. There was a gentleman in a pickup truck on the opposite side of the street. An elderly gentleman, (Otha Thurmond) walked up from the north carrying a "half broom handle type" stick in his right hand. Scheffer described Thurmond as being in his 70's or older and approximately 150-160 lbs. He perceived Thurmond only as an "old man" merely walking around the neighborhood with a stick. Everything was calm and Thurmond did not pose a threat, and he was not involved in the initial disturbance call.

Thurmond walked past Jeffers and as he approached Scheffer within three feet, he asked what was going on. Scheffer advised Thurmond not to worry about it, but he asked again. Thurmond said something to the effect of, "I live in this neighborhood and I need to know what's going on." Scheffer told him again, "Don't worry about it." At that point, Thurmond started shaking the stick and Scheffer told him, "I don't like you shaking that stick like that right beside me." Thurmond then raised the stick up to the height of his head. Unknowing what his intentions were, or whether he was going to swing the stick, Scheffer grabbed the stick to disarm him. Jeffers then grabbed Thurmond and put him up against the hood of the squad car. Thurmond struggled a bit as if he didn't want to put his arms behind his back. Jeffers cuffed him and Scheffer held his right arm.

After Thurmond was placed in the squad car, it became apparent to Scheffer that Thurmond was confused as to what was going on. He kept repeating his questions

and told them he couldn't hear well. He had difficulty following instructions. Scheffer could not recall whether Thurmond said he couldn't see well. He believed Thurmond mentioned he carried the stick to fend off dogs. Jeffers issued Thurmond a misdemeanor citation for Disorderly Conduct. Scheffer advised it was Jeffers' decision to issue the citation. Scheffer's intention was only to disarm Thurmond, advise him not to do that, and to send him on his way.

Scheffer could not recall who said what to Thurmond in regards to explaining the process of the misdemeanor citation. However, it was explained to Thurmond that it was in lieu of a physical arrest. He was given two court dates and advised on what to do to complete the citation process. Thurmond was asked to sign the citation, but he mentioned he could not see without his glasses, although his glasses were in his front pocket. Eventually Thurmond signed the citation after being advised his signature was not an admission of guilt, only that he was receiving a copy.

**Principal Officer Statement:** Officer Michael Jeffers, IBM #12583, stated he and Officer Scheffer made the scene of a disturbance call to Swift because Officers Ross and Warren had called for other cars to assist. Officers Ross and Warren were on the front porch and he and Scheffer stayed on the sidewalk. A male and female black were standing across the street, but were not involved in the initial disturbance. They were not verbally aggressive or threatening at the time and the initial disturbance was under control. He saw nothing more of Thurmond other than an "old man" just walking down the street carrying a stick for dogs. Jeffers observed Mr. Thurmond walking southbound in the roadway carrying a stick. At the time, Thurmond was not aggressive or a threat to anyone. He described Thurmond as an elderly gentleman, 140 to 150 lbs., and about 5'10" in height. Thurmond came up to the side of Scheffer and was rotating the stick around. Thurmond asked Scheffer, "What are y'all doing here?" Scheffer said something like, "Don't worry about it" or "leave," and told Thurmond to stop waving the stick around, and Jeffers chuckled. It was at that time Thurmond raised the stick and Jeffers took him as a threat. Jeffers described the stick as a mop handle or broom handle.

Jeffers detained Thurmond after he raised the stick in the air; completely under the impression he was going to hit Scheffer with it. Thurmond raised the stick with both hands in front of his body as if to make a strike with it. He had raised it far enough that it instantly got his attention. Jeffers grabbed Thurmond by both of his arms between his shoulders and elbows, and at the same time, Scheffer took the stick away from him. Thurmond was tensed up and began to pull away, so Jeffers walked him to the first patrol car and placed his chest against the hood to maintain control. He handcuffed Thurmond and walked him down and placed him in his squad car.

Jeffers did not recall Thurmond having any difficulty hearing or having to repeat his questions. During his encounter with Scheffer, after Thurmond had been placed in the squad car, Jeffers confronted the male and female who were standing across the street behind a parked vehicle. They were yelling and causing a disturbance and appeared to be inciting the situation. They asked Jeffers, "Why did you have to do

him like that?" Jeffers asked the male if he had anything else to offer other than a disturbance here, and he asked both of them to get on the sidewalk. They had not interfered in the detention of Thurmond.

Jeffers charged Thurmond with Disorderly Conduct because he interfered with their ability to assist the other officers on the scene of a disturbance. Jeffers acknowledged Thurmond told him he had never been arrested. That being said, Jeffers was unsure if he explained what a misdemeanor citation was to Thurmond. Jeffers stated he did explain to Thurmond the court dates and what he was being charged with. Jeffers could not recall whether or not he explained where the Annex building was located, or the process of fingerprinting and booking. Thurmond did tell him he could not see well, but Jeffers did not believe him. He did not recall whether Thurmond had difficulty hearing or writing. Furthermore, Jeffers could not recall whether or not he explained the date and court division that Thurmond was to appear in. Jeffers stated he did not physically grab Thurmond's hand and assist him in signing the citation. Jeffers believed it was Scheffer who contacted Lt. Neely by phone and advised him of the situation, but he did not recall doing so himself.

Jeffers stated he alone decided to issue the citation to Thurmond for disorderly conduct putting into consideration of his age and everything. To Jeffers, the actions of Thurmond fit the definition of assault giving him cause to react as he did. Jeffers advised if the same situation were to occur again, he would not change a thing, and the actions he took were to protect himself and Scheffer. After Thurmond was disarmed, Jeffers continued to place him in handcuffs because he was concerned for their safety and that Thurmond may still be armed.

**B) Physical Evidence: N/A**

**C) Forensic Evidence: N/A**

**D) Recorded Evidence:**

- CD's of Recorded Civilian Witness Statements
- CD's of Recorded Officer Statements
- CD's of Recorded Officers BWC Footage
- CD of ICV Footage
- CD of Recorded Radio Communications
- CD of Recorded Cell Phone Footage Provided by Niesha Lowe
- CD of Recorded Cell Phone Footage Provided by Barbara Denton
- Signed Cellular Phone Consent to Search Forms
- Communications Request Forms
- Video Analysis Request Forms
- BWC Audit
- Associated Email

**E) Miscellaneous Evidence: N/A**

**VII) AG Review:**

This case file was not submitted to the Attorney General's Office for review.

**VIII) Analysis:**

The primary issue related to this investigation centers upon the actions of **Officer M. Jeffers, IBM 12583**, and **Officer D. Scheffer, IBM 13218**, and whether their actions transcend the standards of the Memphis Police Department. These standards are established in the Memphis Police Department's **DR-104 Personal Conduct**, which states:

**DR 104 PERSONAL CONDUCT**

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

This administrative investigation revealed that Officer Jeffers and Officer Scheffer encountered an elderly man, Mr. Otha Thurmond, who approached both officers while on a disturbance call at Swift; at approximately 3:30 p.m. Mr. Thurmond was not involved in the disturbance and he approached Officers Jeffers and Scheffer on foot while carrying a long wooden stick. At that time, both officers were not actively involved with the disturbance call and were standing on the sidewalk in front of the residence. The entire incident from Mr. Thurmond's approach to the arrest documentation was captured on both officers' Body-Worn Camera (BWC) and also in the presence of civilian witnesses.

According to the BWC footage, Mr. Thurmond's main intent was to inquire about the police presence in the area by customary means as a concerned citizen and resident in the neighborhood. Although Mr. Thurmond's gestures implied he had difficulty with his hearing, Officer Scheffer responded, "Don't worry about it" in the same tone and volume repeatedly with no tact or empathy towards the elderly man. Further, Mr. Thurmond's demeanor was calm and friendly and did not appear to interfere with the officers' function on the scene.

According to Officer Scheffer's BWC video, Mr. Thurmond's posture with the stick then drew Officer Scheffer's attention to say, "*Hey, man, I don't like you walking around this stick.*" After that statement, Mr. Thurmond changed from carrying the stick at his side to attempting to raise it higher. His intention with the stick was interpreted as Officer



Scheffer immediately grasps the stick and Officer Jeffers takes hold of both Mr. Thurmond's arms.

In Officer Jeffers' ISB statement, he believed Mr. Thurmond's next action with the stick was to strike Officer Scheffer. At no time did either officer give loud verbal commands or instruct Mr. Thurmond to drop the stick. According to Officer Scheffer's ISB statement, he did not feel Mr. Thurmond was a threat; however, he did feel it was necessary to remove it from Mr. Thurmond's grasp. Once the wooden stick was no longer a physical threat, Mr. Thurmond was handcuffed and placed under arrest for Disorderly Conduct.

The issuance of the misdemeanor citation was also captured on BWC video. In Officer Jeffers' ISB statement, he accepted responsibility for issuing a citation in lieu of a physical arrest. Officer Scheffer agreed. On Officer Jeffers' BWC (9 minutes: 17 seconds), his direct statement to Officer Scheffer was *"I better give him something because the way they're acting they're going to say we just snatched him up for nothing, and we didn't do that."* Based on Officer Jeffers' statement to his partner, the issuance of the citation was to justify the physical force used on Mr. Thurmond. He was not cited for Simple Assault or Resisting Arrest.

Additionally, neither officer explained to Mr. Thurmond effectively the misdemeanor citation or read the notice to affix his signature with the understanding of the two appearance dates. Officer Jeffers ordered Mr. Thurmond, who was obviously disoriented, several times to sign the citation or go to jail. At one point, Officer Jeffers placed a firm grip on Mr. Thurmond's wrist as he was holding the pen on the citation and did not consider Mr. Thurmond's inability to read or write. Lastly, Officer Scheffer's BWC footage revealed he was smoking a cigarette on the scene and when he extinguished the cigarette, he "flicked" the cigarette butt in the direction of Mr. Thurmond.

The facts revealed both Officer Scheffer and Jeffers did not consider Mr. Thurmond's age, fragility or mental incapacity when dealing with an elderly person who was not combative or an offender. Mr. Thurmond informed both officers that he could neither see nor hear well multiple times. The civilian witnesses also told both officers that Mr. Thurmond suffered with dementia and utilized the stick as assistance to walk and fend off stray dogs in the neighborhood. The officers' actions and lack of empathy caused an immediate public outcry surrounding the treatment of an elderly individual. Their actions also generated media attention with negative exposure of how members interact with senior citizens. This lack of public trust reflected negatively upon the members and the Department.

The second issue related to this investigation centers upon the actions of **Officer M. Jeffers, IBM 12583** and **Officer D. Scheffer, IBM 13218** and whether their actions transcend the standards of the Memphis Police Department. These standards are established in the Memphis Police Department's **DR-301 Excessive/Unnecessary Force**, which states:

#### **DR 301 EXCESSIVE FORCE/UNNECESSARY FORCE**



**Excessive Force/Unnecessary** is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or themselves from bodily harm.

Officers shall never use force or violence that is unprovoked, needless, or not required during performance of their duties when making an arrest or in dealing with a prisoner or any person. **Unnecessary Force** - *Unnecessary Force* is that force or violence that is unprovoked, needless, or not required when making an arrest or dealing with a prisoner or any person. Officers shall **NEVER** use Unnecessary Force.

*Graham v. Connor (US 1989)* is the landmark US Supreme Court case that defines reasonable use of force by police officers in the line of duty. As such, this standard was applied in defining the Memphis Police Department's use of force policies, which are contained in the Memphis Police Department Policies and Procedures Manual, Chapter 2, Section 8, Response to Resistance, pages 1-11.

The ruling in *Graham V. Connor* holds that all claims that law enforcement officials had used excessive force --deadly or not-- in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen, are properly analyzed under the Fourth Amendment's "objective reasonableness" standard.

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the "20/20 vision of hindsight."

The test of reasonableness is not capable of precise definition or mechanical application. Its proper application requires careful attention to the facts and circumstances of each particular case, including:

1. The severity of the crime at issue;
2. Whether the suspect poses an immediate threat to the safety of the officers or others; and
3. Whether he/she is actively resisting arrest or attempting to evade arrest by flight.

This "objective reasonableness" standard was applied during the investigation of a 'Disturbance' by *Officers Michael Jeffers and David Scheffer at Swift St.* The three standards applied in *Graham v. Connor* were used to determine the reasonableness of the use of force applied by *Officers Jeffers and Scheffer* and revealed the following:

1. The crime at issue in this investigation is ***Disorderly Conduct***, a misdemeanor in the State of Tennessee.
2. The suspect, ***Otha Thurmond*** did pose an immediate threat to the safety of ***when he pointed and waved a broom handle type stick in close proximity to Officer Scheffer.***
3. ***Otha Thurmond*** did not actively resist or attempt to evade arrest.

Mr. Thurmond's arrest was captured on BWC video and witnessed by several civilian witnesses. According to the civilian witnesses, Officer Jeffers' actions were described as unnecessary based on the subject's age, body weight, and known physical disabilities. During the arrest, Officer Jeffers' BWC became detached and inoperable. However, Officer Scheffer's BWC video captured the physical force used by Officer Jeffers' to affect the arrest after the stick was removed from Mr. Thurmond's left hand. From the sidewalk to the patrol car (approximately five to ten feet), Officer Jeffers' momentum forcibly pushed Mr. Thurmond's small frame onto the hood of the patrol vehicle. Thereafter, he and Officer Scheffer struggled with Mr. Thurmond to secure him in handcuffs and failed to verbally instruct him to place his hands behind his back. Mr. Thurmond did not appear to resist or evade the officers. The BWC audio captured Mr. Thurmond's discomfort, confused, and apologetic behavior. The question becomes whether Officer Jeffers should have utilized less force to apply the handcuffs rather than forcing Mr. Thurmond against the patrol vehicle with his weight. In his ISB statement, Officer Jeffers stated he is 6 feet tall and approximately 240 pounds. Mr. Thurmond was shorter and weighed less than half of Officer Jeffers' weight.

The facts of the investigation revealed Officer Jeffers used poor judgement in regards to the level of force used to detain a non-combative 91-year old individual. Although Mr. Thurmond did not complain of any physical injuries, Officer Jeffers' actions were not reasonable, and were unethical and unnecessary.

#### **IX) Conclusion:**

Based on the findings of this investigation, the allegation of violation **DR-104 Personal Conduct**, against **Officer David Scheffer #13218**, is **SUSTAINED.**

Based on the findings of this investigation, the allegation of violation **DR-104 Personal Conduct**, against **Officer Michael Jeffers #12583**, is **SUSTAINED.**

Based on the findings of this investigation, the allegation of violation **DR-301 Excessive Force/Unnecessary Force**, against **Officer David Scheffer #13218**, is **NOT SUSTAINED.**

Based on the findings of this investigation, the allegation of violation **DR-301 Excessive Force/Unnecessary Force**, against **Officer Michael Jeffers #12583**, is **SUSTAINED.**